

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

JUL 28 2005

FILED  
U.S. DISTRICT COURT

MARKUS B. ZIMMER, CLERK

DEPUTY CLERK

2005 JUL 29 A 9:04

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

BY:

DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BRANDON B. QUAYLE,

Defendant.

MEMORANDUM DECISION AND  
ORDER GRANTING  
DEFENDANT/APPELLANT'S  
APPEAL AND REVERSING  
CONVICTION BELOW

Case No. 2:05-CR-263 TS

This matter is before the Court on an interlocutory appeal of a judgment by the magistrate judge in Case No. 2:04-CR-570 RTB. Defendant/Appellant Brandon B. Quayle initiated this appeal on April 21, 2005. The Court issued a Docketing Notice for Appeal from Magistrate Decision on April 26, 2005, wherein the Court established a briefing schedule. Defendant/Appellant timely filed his opening brief on May 6, 2005. However, no responsive brief was filed by the government, and no extension of time was requested or granted. On June 10, 2005, Defendant/Appellant filed a Request for Summary Decision. The government still failed to respond, and no response has been filed as of the date of this Order. Pursuant to

DUCrimR 85-1(c), the Court will decide this matter without a hearing and, as noted above, without a response by the government.

The Tenth Circuit has established that courts sitting on appeal “may not sustain criminal convictions unless the proof offered at trial established the defendant’s guilt beyond a reasonable doubt.” United States v. Hooks, 780 F.2d 1526, 1530-31 (10<sup>th</sup> Cir. 1986). The standard of review is as follows:

The evidence – both direct and circumstantial, together with the reasonable inferences to be drawn therefrom – is sufficient if, when taken in the light most favorable to the government, a reasonable jury could find the defendant guilty beyond a reasonable doubt.

Id. at 1531.

Having reviewed the pleadings, the file, and the transcript of the underlying criminal trial, and being otherwise fully informed, the Court finds that there is insufficient evidence to support a conviction beyond a reasonable doubt on the charges in the underlying criminal case.

Therefore, it is hereby

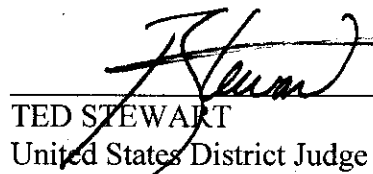
ORDERED that Defendant/Appellant’s appeal is GRANTED and the conviction in the underlying criminal case is REVERSED.

The Clerk of Court is directed to close this case forthwith.

SO ORDERED.

DATED July 28, 2005.

BY THE COURT:



TED STEWART  
United States District Judge